

STATE OF MICHIGAN
COURT OF APPEALS

CONSTANCE HITES f/k/a CONSTANCE
MEANS,

UNPUBLISHED
November 13, 2014

Plaintiff-Appellee,

v

No. 317829
Monroe Circuit Court
LC No. 13-034001-CK

AAA INSURANCE CO,

Defendant,

and

LINDA K. MEANS,

Intervening Defendant-Appellant.

Before: RIORDAN, P.J., and SAAD and TALBOT, JJ.

PER CURIAM.

Linda K. Means appeals as of right from the trial court's order finding that Constance Hites, formerly known as Constance Means, was entitled to \$25,000 of a \$50,000 life insurance policy issued to Hites's former husband, Darrell Means, who is now deceased. We reverse and remand.¹

The decedent and Hites divorced in September 2003. At the time of the divorce, the decedent had a \$150,000 10-year term life insurance policy with AAA Insurance Company (hereinafter "AAA"), which named Hites as a partial beneficiary. The consent judgment of divorce states in pertinent part:

INSURANCE

The Defendant, Darrell L. Means, shall name the Plaintiff, Constance M. Means, as irrevocable beneficiary in the amount of \$25,000.00 of his life insurance policy with AAA.

¹ The parties stipulated to dismiss all claims against AAA Insurance Company.

All other rights of the Plaintiff in and to the proceeds of any policy or contract of life insurance, endowment or annuity upon the life of the Defendant in which Plaintiff was named or designated as beneficiary, or to which Plaintiff became entitled by assignment or change of beneficiary during the marriage or in anticipation thereof, whether such contract of policy was heretofore or shall hereafter be written or become effective, shall hereupon become and be payable to the estate of the Defendant or such named beneficiary as Defendant shall affirmatively designate.

In August 2008, when the term life insurance policy with AAA that was in effect when the consent judgment of divorce was entered into expired, the policy lapsed. The policy was allowed to lapse because the monthly premium increased substantially after the term ended and the decedent was unable to afford it. In September 2008, the decedent took out a new AAA term life insurance policy in the amount of \$50,000, which designated Means as the sole beneficiary. According to Means, the decedent took out the new policy so that she would have money available for his funeral and burial expenses. When the decedent died on January 12, 2013, Hites contacted AAA to collect \$25,000 as partial beneficiary under the \$150,000 AAA term life insurance policy, only to be informed that the policy had lapsed and that the decedent had purchased a new policy naming Means as the only beneficiary.

Means argues on appeal that the trial court erred in setting aside the change in beneficiary of the \$50,000 AAA life insurance policy because the policy naming Means as the sole beneficiary did not breach the consent judgment of divorce. We agree. We review a trial court's interpretation of a consent judgment of divorce de novo and its findings of fact for clear error.² "Clear error exists only when the appellate court is left with the definite and firm conviction that a mistake has been made."³ The trial court has authority "to set aside transfers [of beneficiaries of life insurance proceeds] which violate a divorce judgment and to return the parties to the status quo."⁴

Judgments entered based on the parties' agreement are interpreted as contracts.⁵ "An unambiguous contract must be enforced according to its terms."⁶ "[C]ourts may not change or rewrite plain and unambiguous language in a contract under the guise of interpretation because the parties must live by the words of their agreement."⁷ We find that the language of the consent

² *Sands Appliance Servs, Inc v Wilson*, 463 Mich 231, 238; 615 NW2d 241 (2000); *In re Lobaina Estate*, 267 Mich App 415, 417-418; 705 NW2d 34 (2005).

³ *Herald Co, Inc v Eastern Mich Univ Bd of Regents*, 475 Mich 463, 471; 719 NW2d 19 (2006) (internal quotation marks and citation omitted).

⁴ *Wiltz v John Hancock Mut Life Ins Co*, 58 Mich App 604, 608; 228 NW2d 484 (1975).

⁵ *Mass Indemnity & Life Ins Co v Thomas*, 206 Mich App 265, 268; 520 NW2d 708 (1994).

⁶ *Reed v Reed*, 265 Mich App 131, 141; 693 NW2d 825 (2005).

⁷ *Smith v Smith*, 292 Mich App 699, 702; 823 NW2d 114 (2011) (internal quotation marks and citation omitted).

judgment of divorce is clear that Hites and the decedent bargained for a provision in their divorce judgment making Hites an “irrevocable beneficiary in the amount of \$25,000” of the decedent’s life insurance policy with AAA in existence at the time of the divorce. The consent judgment of divorce does not state that the policy must be maintained indefinitely, or until the decedent’s death, as erroneously found by the trial court. Additionally, the consent judgment of divorce fails to state that Hites’s right to \$25,000 in life insurance proceeds transfers to all future life insurance policies that the decedent may have with AAA. During the term of the \$150,000 AAA policy, the decedent did not change the beneficiary. Rather, the policy lapsed because to continue it past its initial term would have been cost prohibitive to the decedent. This Court would note that had the decedent decided to obtain life insurance coverage through an insurer other than AAA, or not to obtain coverage at all, after the term of the \$150,000 AAA policy ended, the issue in the instant case would likely be moot. As such, we find that the decedent instituting a new life insurance policy, that also happened to be with AAA and named Means as the sole beneficiary, did not violate the consent judgment of divorce. Accordingly, the trial court erred when it set aside the change in beneficiary of the decedent’s \$50,000 AAA life insurance policy to Means because of a breach of the consent judgment of divorce.⁸

Reversed and remanded for entry of an order consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Riordan
/s/ Henry William Saad
/s/ Michael J. Talbot

⁸ This Court would note that this case is distinguishable from *Wiltz*, 58 Mich App at 604, which was relied on by the trial court. In *Wiltz*, “[t]he divorce degree provided that Mr. Wiltz was not to change the beneficiary of any policies under which [his former wife] was designated as beneficiary at the time of filing the suit for divorce. The judgment further ordered that Mr. Wiltz maintain such insurance.” *Id.* at 606. Neither requirement was contained in the consent judgment of divorce in the instant case.